

VIRGINIA CODE COMMISSION

Wednesday, August 23, 2006 - 10 a.m.

General Assembly Building, 6th Floor

Speakers Conference Room

Richmond, Virginia 23219

MEMBERS PRESENT: R. Steven Landes, Chairman; John S. Edwards, Vice Chairman; Robert Hurt; Ryan McDougle; James F. Almand; Robert L. Calhoun; E.M. Miller, Jr.

MEMBERS ABSENT: S. Bernard Goodwyn; Thomas M. Moncure, Jr.; Frank S. Ferguson

OTHERS PRESENT: Jim Guy, Chair, Administrative Law Section, Virginia Bar Association; Michael Quinan, Vice Chair, Administrative Law Section, Virginia Bar Association; Donna Pugh Johnson, Virginia Agribusiness Council; Ken Schrad, State Corporation Commission

STAFF PRESENT: Ken Patterson, Jescey French, Mary Kate Felch, Greg O'Halloran, Jane Chaffin

CALL TO ORDER

Delegate Landes called the meeting to order at 10:20 a.m. As a quorum was not present, the Chairman deferred the first two action items on the agenda and moved to agenda item 4, Attorney General's Regulatory Reform Initiative.

ATTORNEY GENERAL'S REGULATORY REFORM INITIATIVE

The Chairman welcomed Martin Kent, Counsel to the Attorney General. Mr. Kent is heading up the Attorney General's regulatory reform initiative and briefed the Commission on the initiative. A task force consisting of legislators, business leaders and citizens has been formed to take a lengthy look at the regulatory environment in Virginia. Its initial focus is on small business, agriculture and health care (primarily health professions). Additionally, the task force is divided into three working groups that will coincide with the three areas of focus. The groups plan to get out into the areas affected by the regulations, such as Southside Virginia for agriculture, Northern Virginia for small businesses, etc. Through a systematic process using a decision matrix, public input will be obtained. At the first task force meeting in September, the decision making process will be approved. Questions to be raised include whether the regulations are serving a useful purpose or are in conflict with other existing regulations or statutes. Another group made up of Roger Chaffe, Frank Ferguson and a designee of the Virginia Bar Association Administrative Law Section Council will review the regulatory process. Delegate Landes has offered the Commission's assistance with the Attorney General's endeavor.

APPROVAL OF MINUTES

The Chairman noted the presence of a quorum and returned to agenda item 2, review and approval of minutes.

A motion was made and seconded to approve the minutes of the July meeting as presented and the motion carried.

VBA ADMINISTRATIVE LAW SECTION COUNCIL'S ALAC PROPOSAL

Jim Guy, Chairman of the Virginia Bar Association Administrative Law Section Council, introduced himself and Mike Quinan, Vice Chairman of the Council. Mr. Guy presented a proposal to reinstate the Administrative Law Advisory Committee (ALAC), which was disbanded in December 2002 at a time when agencies were asked to find ways to reduce their budget expenditures. Mr. Guy emphasized that the reconstitution of ALAC is not only desirable, but necessary to ensure the effective monitoring and evaluation of the administrative law process. ALAC would provide a venue that could speak on behalf of a diverse field of interests in administrative law, provide an effective monitoring tool, and consistently analyze potentially problematic aspects of administrative procedure. Mr. Guy indicated that he and Mr. Quinan, on behalf of the Council, are committed long term to supporting ALAC. Mr. Calhoun emphasized the need for VBA support when ALAC legislation comes before the General Assembly.

Mr. Miller stated that an appropriation would be needed to reinstate ALAC and suggested that the Code Commission submit a request to Joint Rules for an additional appropriation of \$30,000.

Senator Edwards made a motion, seconded by Senator Calhoun, to submit a request for an additional appropriation of \$30,000 in order to reinstate the Virginia Administrative Law Advisory Committee. The motion was approved.

**REVIEW OF PROPOSED REORGANIZATIONS OF TITLES 16.1, 17.1 20, 31
AND 66**

Jescey French and Mary Kate Felch presented the proposed reorganizations of Title 16.1, Courts Not of Record; Title 17.1, Courts of Record; Title 20, Domestic Relations; and Title 31, Guardian and Ward.

Ms. French stated that staff was directed by the Commission at a previous meeting to combine Titles 16.1 and 17.1 into a single titled named, "Judiciary." Also included is Title 66, Juvenile Justice.

Existing Title 16.1 consists of 11 chapters. The juvenile and domestic relations court provisions make up the largest part of this title. Sections in Title 66 closely relate to these provisions and have been incorporated. Also, the Criminal Sentencing Commission has been moved to Title 19.2 and there are some courts of limited jurisdiction that may be repealed once it is determined they are obsolete. The proposed reorganization consists of 15 proposed chapters.

Mary Felch stated that historically these titles were separate because the district court system and circuit court system are entirely separate. General and juvenile district employees are state employees, and circuit court positions are locally funded. Consolidating these provisions will eliminate some repetition.

Staff was asked to retitle proposed Chapter 14 to "Judicial Policy-Making Bodies."

Title 20, Domestic Relations, has never been recodified. Few changes are needed and staff's recommendation is limited to reordering the chapters.

1 Mr. Miller made a motion to consistently include the word "Uniform" in the name of any
2 uniform act for which the state has received credit. Senator Calhoun seconded the motion
3 and the motion was approved.

4 Title 31, Guardian and Ward, is proposed to be moved to the property title. The
5 Commission previously decided to consolidate all types of property into one title.
6 [NOTE: The October 2005 minutes state that the Commission decided to place Title 31,
7 Guardian and Ward, into a separate title with Fiduciaries, Wills, Trusts and Estates, as
8 well as the Uniform Custodial Trust Act, the Uniform Trust Fund Act, and the Uniform
9 Principal and Income Act.]

10 **REVIEW OF PROPOSED REORGANIZATION OF TITLES 8.01 AND 25.1**

11 Greg O'Halloran presented the proposed reorganizations of Titles 8.01, Civil Remedies
12 and Procedure) and 25.1 (Eminent Domain).

13 Title 8.01 currently consists of 36 chapters. Staff proposed merging Chapters 17.1, 17.2
14 and 17.3, all uniform acts relating to foreign judgments and claims, as articles under a
15 single chapter. Chapters 20.1, 20.2, 21, and 21.2 could be merged into one chapter titled,
16 "Summary Jury Trial and Alternative Dispute Resolution." Several other chapters can be
17 eliminated by combining them with other chapters.

18 The Commission discussed the status of the Rules of Evidence draft proposed by the
19 Advisory Committee on Rules of Court to the Judicial Council of Virginia. A July 20,
20 2006, article in "Virginia Lawyers Weekly" indicates that a discussion draft is being
21 circulated for public comment. Once comments are received and reviewed, the advisory
22 committee will make further revisions and refer the rules to the Judicial Council and
23 Supreme Court. Once adopted by the Supreme Court, the rules will be forwarded to the
24 Virginia Code Commission for presentation to the General Assembly in 2007 or 2008.

25 The Commission referred Chapter 20.1 (§ 8.01-576.1 et seq.) of Title 8.01, relating to
26 summary jury trial, to the obsolete laws project staff to work with Mr. O'Halloran to
27 research the history of the chapter and to determine whether the chapter is used.

28 Title 25.1, Eminent Domain, was recodified in 2002 and is in excellent structural
29 condition. Staff suggests transferring Chapter 19 of Title 15.2, Condemnation by
30 Localities, from Title 15.2 into Title 25.1.

31 **REVIEW OF LEXIS REPORT ON HANDLING OF CONTINGENT** 32 **LEGISLATION IN OTHER JURISDICTIONS**

33 Mr. Miller referred to the LexisNexis report on how other states handle legislation with
34 contingent effective dates. The report was prepared as a result of prior Code Commission
35 discussion about the amount of Virginia legislation that passed contingent on the
36 appropriation of funds. Leigh Trippe with LexisNexis had offered to compile information
37 on how other states handle this type of legislation. Virginia sets out the contingent section
38 and LexisNexis editors provide annotations noting whether the section was funded based
39 on information provided by the Division of Legislative Services (DLS). Tracking these

1 types of provisions is difficult and DLS must rely on money committee staffs for
2 assistance.

3 A significant problem exists in situations when a bill is referred to the money committee
4 and, knowing that the legislation is not funded, the committee reports the bill out of
5 committee with a clause stating that it is effective contingent on funding. This practice
6 has developed over the years. In the past, the substantive committee would adopt a
7 particular piece of legislation and refer to the money committees to ensure that funding
8 was provided in the budget. The Commission will ask the money committee staff
9 directors or committee chairmen to speak to the Commission about the standards in place
10 for applying these funding contingencies to legislation.

11 The Chairman asked staff to look into how the number of bills with funding
12 contingencies has increased over the last 10 to 15 years. The Code Commission would
13 like to find a solution to this problem from a policy standpoint.

14 **OTHER BUSINESS AND PUBLIC COMMENT**

15 Mr. Miller reported that he sent a letter to Karl Hade and to the 2007 Code
16 Reorganization Work Group members notifying them that the Code Commission is
17 revisiting the prospect of continuing with the Code reorganization, but with a later
18 projected completion date. The letter asks for a response by October 1 so that the
19 information can be presented to the Commission at its October meeting.

20 No one came forward during the designated public comment period.

21 **ADJOURNMENT**

22 There being no further business, the meeting adjourned at 12:10 p.m.